IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 822 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ABDULHUSAIN @ BADEMIYA NANNAMIYA SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 822 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 20-12-2001 passed by the

Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mrs.H.B.Punani, for the respondents. I have also perused the material on record. Learned advocate for the petitioner has stated that six prohibition cases have been registered against the detenu and last case was registered on 8-9-2001 while the order of detention was passed on 20-12-2001 and according to him, there is a delay of more than three months in passing the detention order. Learned AGP has fairly admitted the same. In this connection, he has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. In the present case, it is to be noted that last offence registered against the petitioner was on 8-9-2001 whereas order of detention was passed on 20-12-2001 based on this offence and hence, there is a delay of three months and 12 days in passing the impugned detention order. No satisfactory explanation has been putforward by the concerned authority for the delay in passing the impugned detention order though affidavit affirmed by Shri J.R.Rajput, Under Secretary to the Govt. of Gujarat, Home Department (Spl.), Sachivalaya, Gandhinagar is produced on record by the learned AGP. Affidavit is ordered to be taken on record. Therefore, in view of the

aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 20-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Abdulhusain Bademiya Nannamiya Sheikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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